

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

CHARLES LEN MERCER,)	No. ED104601
)	
Appellant/Cross-Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Hon. Ellen H. Ribaud
BUSCOMM INCORPORATED,)	
)	Filed:
Respondent/Cross-Appellant.)	March 28, 2017

Charles Len Mercer (“Appellant”) appeals from judgment notwithstanding the verdict in favor of BusComm Incorporated following a jury trial. Appellant argues that the trial court erred in granting BusComm’s motion for JNOV because Appellant made a submissible case for unpaid commission under the Missouri Merchandising Practices Act (“MMPA”). Appellant also appeals the trial court’s denial of his motion for attorney fees under the MMPA. BusComm cross-appeals the trial court’s denial of its motion for attorney fees under the Missouri Human Rights Act (“MHRA”). Both parties also filed motions for attorney fees on appeal.

REVERSED AND REMANDED, IN PART, AND AFFIRMED, IN PART;
CROSS-APPEAL AFFIRMED;
ALL MOTIONS FOR ATTORNEY FEES DENIED.

Division Three holds:

Viewing the evidence and all inferences in the light most favorable to the verdict, we find probative facts to support the jury’s verdict. A reasonable juror could have concluded that Appellant sold orders within the relevant time frame pursuant to his commission agreement with BusComm. We find that Appellant made a submissible case, and the trial court, therefore, erred in granting BusComm’s motion for JNOV.

As for Appellant’s claim for attorney fees under the MMPA, we find that Appellant was not the prevailing party at the time the trial court ruled on his claim for attorney fees, and therefore, the trial court did not err in denying Appellant’s claim. While we agree the JNOV was improper, because the case is remanded with directions to the trial court to reverse the JNOV *and* consider and rule upon BusComm’s alternative motions for new trial or remittitur, we are unable to determine which party will prevail or to consider any award of attorney fees on that basis.

As for BusComm’s cross-appeal for attorney fees, we find no suggestion in the trial court’s order indicating that the trial court found the Appellant’s MHRA claims to be “without foundation” or otherwise “frivolous, unreasonable or groundless.” Accordingly, we find no abuse of discretion and affirm the trial court’s denial of BusComm’s motion for attorney fees.

Both parties also filed motions for attorney fees on appeal. Having denied BusComm's cross-appeal, we find no basis to award BusComm fees on appeal. Because we are reversing and remanding this case, it is premature to consider an award of attorney fees on appeal based on a "prevailing party" status under the MMPA. All motions are denied.

Opinion by: Robert G. Dowd, Jr., J.
Angela T. Quigless, P.J. and Lisa S. Van Amburg, J., concur.

Attorney for Appellant: Kevin J. Kasper

Attorney for Respondent: Eugene J. Brockland, Jr.

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.